IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 2549 (MS) OF 2001

(OLD NO. 47931 OF 1999)

Nawab,
S/o Shri Abdul Rashid,
R/o Nawab Meat Bhandar,
Devi Road, Kotdwar,
District – Pauri Garhwal. .....Petitioner.

Versus

1. Deputy Labour Commissioner,
   Garhwal Division,
   Dehradun.
2. Collector,
   Pauri Garhwal,
3. Tehsildar, Kotdwar,
   District- Pauri Garhwal.
4. Mangal (Minor)
   S/O Shri Chandra Mohan,
   R/O Sitapur, Nepal,
   Through his father and natural guardian Sri Chandra Mohan. .....Respondents.

Dated: 13.06.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Rajendra Dobhal, Advocate for the petitioner and standing counsel for the respondents no. 1 to 3.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 27th August, 1999 by which the recovery is being made for a sum of Rs. 20,000/-

Briefly stated, on 8th April, 1997, the shop of the petitioner was inspected by Sri Anand Prasad Balodi and Shri Anil Negi, Inspector of the respondent no. 1 and at the time of said

inspection, they found that the respondent no. 4 was working as labour in the shop of petitioner, thereafter, on 17.06.1997 a notice was given to the petitioner, but the petitioner did not comply the said notice. In this regard, a complaint was filed against the petitioner under Section 14 of the 14 of the Child Labour Prohibition and Regulation Act. 1986. A criminal case being Criminal Case No. 513 of 1997 State Vs. Nawab was instituted and the trial Court after considering the entire evidence acquitted the petitioner on 7th September, 1998. findings to that effect is quoted below:-

"cky Je ¼ifr"k/k ,o fofu;e½ vfofu;e e cky dh ifjHkk"kk 14 o"k l de vk;q d cPp ij ykx gkrk gA tcfd fujh{kd vkuUn idk'k cykn u crkj ih0 MCy&2 Lo;q dgk g fd cPpk 13&14 o"k dk FkkA ,slh fLFkfr e dfFkr cky Jfed exy dk vf/kfu;e d vuqi:i cky Jfed lUnsg l iq ugh ekuk tk ldrkA ejs fopkj e ,slh fLFkfr mRiUu gku ij fujh{kdx.k dk vf/kfu;e dh /kkjk &10 d vUrxZr fofgr fpfdRlh; ikf/kdkjh l dfFkr cky Jfed dh vk;q lqfuf'pr djuk vfuok;q FkkA^^

Further the impugned order has been passed without giving any opportunity to the petitioner. It is well settled that no orders can be passed without affording any opportunity to the petitioner.

Petitioner has relied upon the judgment dated 08.12.1999 passed in Writ Petition No. 49877 of 1999 Gulshan Kumar Vs. state of U.P. The operative portion of the aforesaid judgment is quoted below:-

"This petition is being field challenging imposition of penalty on the basis of judgment of the Apex Court in the Case of M.C. Mehta versus State of Tamil Nadu AIR 1997 SC 699 impending enquiry under Child Labour (Prohibition and Regulation) Act, 1986 called 'the Act'.

It is contended by the petitioner that objections were filed against show cause notice but the same has not been decided by affording an opportunity of hearing as required under law.

On the other hand the authorities are proceedings to recover penalty under the show cause notice without conducting, as require under law a proper survey by competent authority who should have decided objections and also taken into account relevant factors (including nature of the undertaking etc. and other mitigating circumstances) which would have been relevant to determine that amount of penalty i.e. whether maximum or lessor amount of penalty contemplated under law should have been imposed or not.

In view of the decisions in the case of M/s Chhota Bhai Munna Bai and Company, Naini and others Versus State of U.P. 1999 (81) FLR 43), as well as the judgment of the Apex Court in the case of M.S. Mehta (supra), the concerned authorities should not have proceeded arbitrarily.

Authority (competent under the Act) is directed, to keep in mind the above judgments and decide the objections, after affording opportunity of hearing in accordance with law and pass final order/s before imposing and initiating action of recovery of penalty if at all warranted.

It is open to the concerned authority to pass fresh orders under the Act as aforementioned.

Respondents are restrained from taking steps or action for the recovery of the penalty contained in the 'show cause notice' under the Act. The concerned authority shall decide the objections in accordance with law keeping in mind aforesaid judgments passed and order/s and then take action accordingly.

In the present case, the petitioner has allegedly been acquitted on the ground that there was no material to hold that the petitioner was below 14 years as according to the evidence in the criminal case, the statement of PW2 Anand Prasad Balodhi was recorded, who has stated that he was 13-14 years of age and their was a idea as to whether the petitioner was minor or not.

In view of the acquittal in the criminal case as well as there being no evidence and no opportunity was given to the petitioner, a writ of certiorari is issued quashing the order dated 27.08.1999 (Annexure No. 2 to this writ petition) passed by the respondent no. 1.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

13.06.2006

Rathour